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TECHNOLOGY CENTER 3:000

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Howard & Howard
Pinehurst Office Center Suite 101
39400 Woodward Avenue
Bloomfield Hills, MI 48304-5151

In re Application of
Richard Humpert et al.
Application No. 09/890,203
Filed: October 5, 2001
For: FUNCTION CARRIER FOR A METAL
FOR A PLASTIC PLATE COMPONENT

**DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT**

This is a decision on applicant's Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office on February 22, 2005.

The petition is **DENIED**.

A review of the file record reveals that the application was under Final rejection as of the mailing date of December 23, 2003. Applicant filed a Notice of Appeal and a request for a two-month extension of time May 21, 2004. A Request for Continued Examination (RCE) and a five-month extension of time were filed on January 19, 2005. A Notice of Abandonment was mailed January 26, 2005 and a Non-Final Office Action was mailed on March 8, 2005.

The RCE was filed late. The period to file an Appeal Brief or RCE expired on December 21, 2004. Thus, the application was properly abandoned of January 26, 2005. The Non-Final Office action of March 8, 2005 was mailed after abandonment of the application and is therefore improper. The application is being forwarded to the Supervisory Legal Instruments Examiner to vacate the March 8, 2005 Office action and return the case status to abandoned.

The application is properly abandoned. The petition is **DENIED**.

Applicants may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply

from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is \$500. The fee for a petition under the unintentional standard is \$1,500. If applicants have, or can qualify as a “small entity” and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled “Petition to Revive.”

Further correspondence with respect to a petition to revive should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: 2011 South Clark Place
Crystal Plaza Two, Lobby
Room 1B03
Arlington, VA 22202

By FAX: (703) 872-9306
ATTN: Office of Petitions

Telephone inquiries should be directed to the Office of Petitions Staff at (571) 272-3282.



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KJD/jwk: 5/4/05